IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1194 OF 2005

Deepak Alias Nana Tukaram Kharat ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.V.B.Tapkir for Applicant.

Mr.K.V.Saste, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 4, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. The only material pressed into service against the Applicant, who is the husband of the deceased, for the offence under Section 302 read with 34 of the Indian Penal Code, is the statement of the deceased recorded on 18th August 2004. Even on fair reading of the said statement, there is

nothing to indicate that the Applicant had participated in the commission of that offence (Section 302). On the other hand, it gives an impression that the mother-in-law of the deceased had a quarrel with the deceased and she proceeded to pour kerosene and put the deceased on fire. The Applicant came out from the room only thereafter, and when he witnessed that the deceased was set on fire, he immediately took steps to save her. From this evidence, it is not possible to say that the Applicant was party to offence committed by his mother, as no other evidence is forthcoming. Merely because there is evidence that the Applicant, as husband, inflicted cruelty on the deceased, cannot be the basis to proceed against the Applicant for offence under Section 302 of the Indian Penal Code.

3. Be that as it may, all these aspects will have to be considered at the trial. Assuming that there is sufficient evidence on record to indicate complicity of the Applicant for offence under Section 498-A of the Indian Penal Code, the maximum sentence is three years. The Applicant is already

in custody since September 2004. There is no likelihood of trial concluding immediately, although this Court has already directed early disposal of the case by referring it to the Fast Track Court, while considering the application of Applicant's mother.

4. Taking overall view of the matter, the Applicant deserves to be released on bail on the following conditions:

(a) The Applicant is released on bail in connection with C.R.No.83 of 2004 registered with Saswad Police Station, Pune, on executing personal bond in the sum of Rs.10,000/- (Rupees Ten Thousand) with two local sureties in the like amount.

(b) The Applicant shall report to the concerned Police Station as and when called upon.

(c) The Applicant shall not influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(d) The Applicant shall extend full co-operation to the Trial Court for early disposal of the trial and if the Trial Court is of the opinion that the Applicant is responsible for the delay of the trial, that fact be recorded in the Roznama, which will be a ground for cancellation of bail.

5. Needless to observe that the Trial Court will decide the matter on the basis of the evidence led before it, uninfluenced by the observations made in the present order, which is only for the limited purpose of considering prayer of the Applicant for bail.

6. Application disposed of on the above terms.

A.M.KHANWILKAR, J.